

SENATE BILL NO. 49

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONFIDENTIALITY PROVISIONS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CHARGE FOR MULTIPLE COPIES OF REPORTS; AND AMENDING SECTION 41-3-205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive

1 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
2 placement;

3 (c) a health or mental health professional who is treating the family or child who is the subject of a report
4 in the records;

5 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
6 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
7 person who reported or provided information on the alleged child abuse or neglect incident contained in the
8 records;

9 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
10 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by
11 the court to represent a child in a pending case;

12 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

13 (g) approved foster and adoptive parents who are or may be providing care for a child;

14 (h) a person about whom a report has been made and that person's attorney, with respect to the
15 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
16 person whose safety may be endangered;

17 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
18 an alleged perpetrator of child abuse or neglect;

19 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
20 that is authorized by the department to conduct the research or evaluation;

21 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
22 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
23 treatment plan, and monitoring the plan;

24 (l) the coroner or medical examiner when determining the cause of death of a child;

25 (m) a child fatality review team recognized by the department;

26 (n) a department or agency investigating an applicant for a license or registration that is required to
27 operate a youth care facility, day-care facility, or child-placing agency;

28 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
29 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
30 children through employment or volunteer activities. A request for information under this subsection (3)(o) must

1 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
2 children, persons with developmental disabilities, or older persons posed by the person about whom the
3 information is sought, as determined by the department.

4 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
5 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
6 privacy rights of the child or the child's parent or guardian, as determined by the department;

7 (q) an employee of the department or other state agency if disclosure of the records is necessary for
8 administration of programs designed to benefit the child;

9 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary
10 to meet requirements of the federal Indian Child Welfare Act;

11 (s) a youth probation officer who is working in an official capacity with the child who is the subject of a
12 report in the records;

13 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
14 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

15 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
16 board established under Title 41, chapter 3, part 10;

17 (v) a school employee participating in an interview of a child by a social worker, county attorney, or
18 peace officer, as provided in 41-3-202;

19 (w) a member of a county interdisciplinary child information team formed under the provisions of
20 52-2-211;

21 (x) members of a local interagency staffing group provided for in 52-2-203;

22 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

23 (z) a principal of a school or other employee of the school district authorized by the trustees of the
24 district to receive the information with respect to a student of the district who is a client of the department.

25 (4) A school or school district may disclose, without consent, personally identifiable information from
26 the education records of a pupil to the department, the court, a review board, and the child's court-appointed
27 attorney, guardian ad litem, or special advocate.

28 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
29 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
30 provisions of the law.

1 (6) (a) A person who is authorized to receive records under this section shall maintain the confidentiality
2 of the records and may not disclose information in the records to anyone other than the persons described in
3 subsection (3)(a), EXCEPT AS PROVIDED IN SUBSECTION (6)(B).

4 (b) However, this This subsection (6) may not be construed to compel a family member person
5 responsible for a child's welfare to keep the proceedings confidential.

6 (c) If a person responsible for a child's welfare makes public statements, ORALLY OR IN WRITING, OR
7 PRIVATE, WRITTEN STATEMENTS TO THE NEWS MEDIA, A MEMBER OF THE UNITED STATES CONGRESS, OR A STATE
8 LEGISLATOR OR LEGISLATIVE COMMITTEE regarding any child abuse or neglect action taken under this chapter, the
9 public THOSE statements are considered to be a waiver BY THAT PERSON of the THAT PERSON'S RIGHT TO
10 confidentiality provisions under this chapter and the department may respond TO THE PERSON OR ENTITY TO WHOM
11 THE STATEMENTS WERE MADE with fact-specific information regarding THAT PERSON'S INVOLVEMENT WITH the case
12 UNLESS DISCLOSURE OF THE INFORMATION IS DETERMINED BY THE DEPARTMENT TO BE DETRIMENTAL TO THE CHILD.

13 (7) A news organization or its employee, including a freelance writer or reporter, is not liable for
14 reporting facts or statements made by an immediate family member under subsection (6) if the news
15 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
16 proceeding.

17 (8) This section is not intended to affect the confidentiality of criminal court records, records of law
18 enforcement agencies, or medical records covered by state or federal disclosure limitations.

19 (9) ~~Copies~~ A single copy of records, evaluations, reports, or other evidence obtained or generated
20 pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must
21 be provided without cost. The department may establish and charge a uniform fee for providing additional
22 copies. If a fee is established, it must be charged uniformly and may not exceed the actual cost of providing the
23 copies."

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